

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

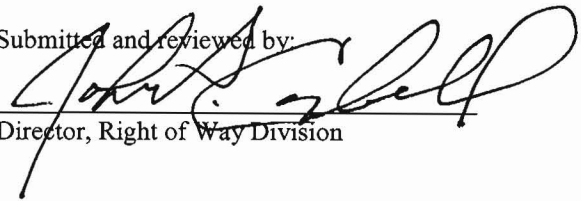
The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §21.142, definitions, §21.150, permits, §21.154, lighting and movement of signs, new §21.163, electronic signs, amendments to §21.441, permit for erection of off-premise sign, and §21.551, prohibited signs, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments and new section, attached to this minute order as Exhibits A - C, are incorporated by reference as though set forth at length verbatim in this minute order.

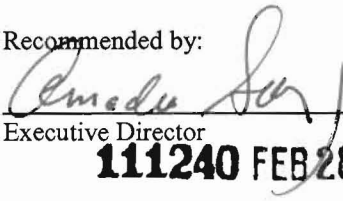
IT IS THEREFORE ORDERED by the commission that the amendments to §21.142, §21.150, and §21.154, new §21.163, and amendments to §21.441, and §21.551 are adopted and are authorized for filing with the Office of the Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Director, Right of Way Division

Recommended by:


Executive Director

111240 FEB 28 08

Minute
Number

Date
Passed

Adoption Preamble

The Texas Department of Transportation (department) adopts amendments to §21.142, concerning definitions; §21.150, concerning permits; §21.154, concerning lighting of signs; new §21.163, concerning electronic signs; amendments to §21.441, concerning permit for erection of off-premise sign; and §21.551 concerning prohibited signs. The effective date of these rules is June 1, 2008. The amendments to §§21.142, 21.150, 21.154, 21.441 and 21.551 are adopted without changes to the proposed text as published in the September 7, 2007 edition of the *Texas Register* (32 TexReg 6106) and will not be republished. New §21.163 is adopted with changes to the proposed text as published in the September 7, 2007 edition of the *Texas Register* (32 TexReg 6106).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

The purpose for amendments to §21.150 and §21.441 is to implement the provisions of House Bill 2944 (HB 2944), passed by the 80th Legislature in 2007. HB 2944 amends Transportation Code, §391.068, to provide that the commission may not issue a permit for a sign within the jurisdiction of a municipality with a population of more than 1.9 million that exercises its authority to regulate outdoor advertising, unless the municipality has first issued local permission for the sign.

1 The purpose for changes to §21.142, §21.154, §21.551 and the
2 addition of new §21.163 is to establish criteria to provide for
3 local control and discretion over the regulation of electronic
4 off-premise outdoor advertising signs which are limited to the
5 corporate limits and controlled extra territorial jurisdiction
6 of municipalities.

7
8 The primary responsibility of the department is to carry out the
9 spirit and intent of the federal Highway Beautification Act
10 while recognizing the fundamental right of the regulated
11 industry to compete and pursue the business opportunities
12 presented by the evolution of technology applicable to their
13 particular area of free enterprise.

14
15 Amendments to §21.142, Definitions, define an electronic sign to
16 be a sign, display, or device that changes its message by
17 programmable electronic or mechanical processes.

18
19 House Bill 2944 amends Transportation Code, §391.068, to provide
20 that the commission may not issue a permit for a sign within the
21 jurisdiction of a municipality with a population of more than
22 1.9 million that exercises its authority to regulate outdoor
23 advertising, unless the municipality has issued a permit for the
24 sign. To comply with HB 2944, amendments to §21.150, Permits,
25 require that an application for a permit for a sign along a

regulated highway that is to be located within the jurisdiction of a municipality with a population of more than 1.9 million be accompanied by a certified copy of the permit issued by the municipality.

Amendments to §21.154, Lighting and Movement of Signs, delete the reference to LED (light-emitting diode) screen and other video displays to authorize the use of LED displays as electronic signs.

New §21.163 regulates the use of electronic signs. The rules establish minimum criteria to limit eligibility of electronic signs and to minimize the distractive effect of commercial electronic variable message signs (CEVMS) to enhance safety on highways.

New §21.163(a), Electronic images, sets forth the department's determination that the use of an electronic image is not the use of flashing, intermittent, or moving light and, therefore, does not violate §21.154 or any other rule, regulation, or standard promulgated by the department or any agreement between the department and the Secretary of Transportation of the United States that prohibits the use of such technology. To comply with federal requirements, and with respect to the prohibition on mobile signs, in order to prevent temporary electronic signs,

1 new §21.163(b), Prohibitions, prohibits the use of flashing,
2 intermittent, or moving lights to illuminate signs; prohibits
3 signs from displaying animated, moving video, or scrolling
4 advertising; prohibits signs that consist of a static image
5 projected upon a stationary object; and prohibits an electronic
6 sign from being located on a truck or trailer.

7
8 New §21.163(c), Location of electronic signs, describes location
9 requirements for electronic signs to provide control of
10 electronic signs at the local government level.

11
12 New §21.163(d), Upgrading an electronic sign, prohibits the
13 addition of lighting to a nonconforming sign and requires a
14 permit to convert a conforming sign to an electronic sign.

15
16 To insure the safety of the traveling public and to insure
17 compliance with federal requirements, new §21.163(e), Eligible
18 electronic signs, details criteria for electronic signs,
19 including visibility and display requirements.

20
21 New §21.163(f), Safety, describes requirements necessary for
22 automatic adjustment to the sign and default settings in the
23 event of possible malfunction and concerning brightness levels
24 to insure the safety of the traveling public.

1 New §21.163(g), Owner responsibility, lists owner
2 responsibilities including the requirement that owners
3 coordinate with emergency officials and provide contact
4 information to the department in case of electronic sign
5 malfunction.

6
7 New §21.163(h), Granting permits, provides for permit
8 requirements.

9
10 New §21.163(i), Conflicts with subchapter, provides that §21.163
11 controls in the case of a conflict with other provisions of the
12 subchapter.

13
14 House Bill 2944 amends Transportation Code, §394.021 and
15 §394.022, to provide that the commission may not issue a permit
16 for a sign within the jurisdiction of a municipality with a
17 population of more than 1.9 million exercising its authority to
18 regulate off-premises signs unless the municipality has issued a
19 permit for the sign. To comply with HB 2944, §21.441, Permit for
20 Erection of Off-Premise Sign, requires that an application for a
21 permit for an off-premise sign that is visible from the main-
22 traveled way of a rural road and that is located within the
23 jurisdiction of a municipality with a population of more than
24 1.9 million, must be accompanied by a certified copy of the
25 permit issued by the municipality.

To clarify that electronic signs may not be located along rural roads, §21.551, Prohibited Signs, adds requirements prohibiting animated or scrolling displays and digital signs.

COMMENTS

The Texas Transportation Commission (commission) proposed amendments and the new section on August 23, 2007. During the public-comment period, which ended December 6, 2007, the department received approximately 800 comments regarding the proposed amendments to §§21.142, 21.150, 21.154, new §21.163, and amendments to §§21.441, and 21.551. Recognizing the level of interest on both sides of the matter, the rules were made available for public comment for 90 days, rather than the customary 30 days. The comments were sub-divided by respondent affiliation and indexed under these general categories: general public, regulated industry, public officials, and association and interest groups.

Pursuant to the Administrative Procedures Act, Government Code, Chapter 2001, the department conducted a public hearing to receive comments concerning the proposed rules. The public hearing was held at 9 a.m. on Wednesday, November 28, 2007, in the first-floor hearing room of the Dewitt C. Greer State Highway Building in Austin, Texas. Twenty-two people provided

1 written and oral testimony during the public hearing. A summary
2 of the comments and the department's responses follow.

3
4 **COMMENT:**

5 During the public hearing, Lee Vela, president of Outdoor
6 Advertising Association of Texas, provided testimony and made
7 general reference to a recent safety study by Tantala Associates
8 Consulting Engineers that concluded no correlation demonstrating
9 a statistically valid relationship between vehicular accidents
10 and the presence of billboards including conventional and
11 digital billboards. Mr. Vela also made general reference to a
12 Virginia Tech Transportation Institute study that found digital
13 displays to be "safety neutral" in design and operation.

14
15 Mr. Vela offered into the record Exhibit #3, a copy of the
16 September 25, 2007, memo from FHWA to the department and
17 testified that it established digital displays do not violate
18 rules set out in the Highway Beautification Act. Mr. Vela
19 concluded his comments with observations of potential benefits
20 to local law-enforcement agencies and emergency-message handling
21 to reach the public for use with AMBER Alerts and other
22 emergency and evacuation management situations.

23
24 **RESPONSE:**

25 These comments offered on behalf of the industry as represented

1 by the Outdoor Advertising Association of Texas present a
2 general position in favor of the rules, as proposed, with no
3 specific recommendations for revision. The testimony is noted
4 and no additional action affecting the substance of these rules
5 as proposed is made as a result of these comments.

6
7 **COMMENT:**

8 During the public hearing, Blake Custer, president of Clear
9 Channel Outdoor, San Antonio Division, provided testimony that
10 included the following four specific comments:

11
12 (1) Mr. Custer commented that the structure of subsection (c)
13 of §21.163 leads to the interpretation that the rule is
14 precluding municipalities from allowing electronic displays on
15 roads other than regulated highways. Clear Channel offered the
16 following revision such that the first sentence would read,
17 "Electronic signs may be located within corporate limits."

18
19 (2) Mr. Custer proposes to revise §21.163(c)(2) by eliminating
20 the 1,500 foot spacing criteria for the relocation of an
21 electronic sign in favor of the existing spacing criteria
22 included under §21.160, Relocation, of the existing rules.

23
24 (3) Mr. Custer commented that the proposed subsection (d) of
25 §21.163 blurs the application of the non-conforming designation.

1 Clear Channel offered the following revision such that
2 §21.163(d)(2) would read as "a structure on a legally conforming
3 location as determined by department rule may be modified to an
4 electronic sign if a new permit is obtained."

5
6 (4) Mr. Custer commented that the intent of subsection (e) of
7 §21.163 is unclear. The use of electronic displays gives Texas
8 businesses the flexibility to tailor their messages to
9 consumers. Mr. Custer offered a proposed revision to remove
10 paragraph (4), questioning whether there is a compelling reason
11 to control the number of different displays per cycle.

12
13 **RESPONSE:**

14 (1) Given that these rules apply only to regulated highways,
15 the proposed revision is a matter of editorial preference and
16 has no affect on the intent or meaning of the rule as proposed.
17 These rules are specific to regulated highways and do not change
18 any current law regarding a city's authority to control signs
19 along city streets. For the department to include language
20 regarding what can and cannot be located along a city street
21 would be beyond what these rules are intended and authorized to
22 regulate. No change to the section is made as a result of this
23 comment.

24
25 (2) The 1,500 foot spacing criteria for relocation of an

1 electronic sign is intended to decrease the distractive effect
2 of adjacent electronic signs and enhance the safety of the
3 traveling public. The testimony is noted and §21.163(c)(2) is
4 revised to clarify that the 1,500 foot spacing criteria applies
5 to spacing off-premise electronic signs and therefore the
6 spacing criteria in §21.160 will apply to relocations adjacent
7 to non-electronic off-premise signs.

8
9 (3) The distractive effect of multiple electronic sign displays
10 is appropriately mitigated thru control of the minimum allowable
11 duration for an individual message display (proposed as a
12 minimum eight seconds in these rules). The department concurs
13 with the comment that controlling the number of displays per
14 cycle provides no safety benefit and paragraph (4) of §21.163(e)
15 as proposed is removed.

16
17 (4) The department acknowledges that the primary mechanism for
18 effective control of outdoor advertising is the elimination of
19 non-conforming signs over time. It is the intent of the rules
20 as proposed to prohibit any consideration for the conversion of
21 a non-conforming sign to an electronic display. Paragraph (2)
22 of §21.163(d) is revised to provide that "a legally conforming
23 sign may be modified to an electronic sign if a new permit for
24 the electronic sign is obtained from both the municipality and
25 the department."

1

2 **COMMENT:**

3 During the public hearing, Don Riley, with Lamar Advertising,
4 provided testimony and cited a Virginia Tech study. Mr. Riley
5 offered into the record Exhibit #6, the study titled "Driving
6 Performance and Digital Billboards." Mr. Riley stated that the
7 referenced study concluded digital billboards to be "safety-
8 neutral." Mr. Riley also submitted letters that conventional
9 billboards have not been shown to cause traffic accidents or
10 change driver behavior. Mr. Riley concluded his comments
11 supporting the AMBER Alert and Silver Alert systems for the
12 elderly.

13

14 **RESPONSE:**

15 These comments offered on behalf of the industry as represented
16 by Lamar Advertising present a general position in favor of the
17 rules, as proposed, with no specific recommendations for
18 revision. The testimony is noted and no additional action
19 affecting the substance of these rules as proposed is made as a
20 result of these comments.

21

22 **COMMENT:**

23 During the public hearing, Michael Tantala, P.E., with Tantala
24 Associates Consulting Engineers, presented testimony and
25 submitted a study he authored on "An Examination of the

Relationship between Signs and Traffic Safety". The study concluded that digital billboards have no statistically significant relationship with occurrence of accidents. The data showed no increase in accident rates.

RESPONSE:

These comments offered on behalf of Tantala Associates Consulting Engineers present a general position in favor of the rules, as proposed, with no specific recommendations for revision. The testimony is noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

The Federal Highway Administration (FHWA) urged the department to strongly consider the following:

(1) Interval of Change/Spacing – The timing of a sign change should not be such that a driver traveling at the posted speed limit on a particular route would be exposed to each sign encountered being in transition during his/her trip.

(2) Spacing – Specific spacing for electronic signs is not addressed in the proposed language with the exception of relocated signs. It appears spacing for electronic digital

signs is the same spacing as currently required in Texas Administrative Code, Title 43, §21.153. FHWA Texas Division is requesting the department reconsider the spacing on non-freeway primary routes in incorporated municipalities (Texas Administrative Code, Title 43, §21.153(f)), and increase the spacing requirement for changeable electronic variable-message signs (CEVMS). Some states currently allowing CEVMS increased the spacing requirement by doubling the spacing requirement for this category of sign, and "we [FHWA] suggest you do the same."

(3) The word "cycle" should be defined for greater clarity. The word cycle is used at §21.163(e)(4).

(4) Additionally, FHWA Texas Division would like the department to track accident rates in areas where new changeable message signs occur on controlled routes as a result of the new regulation. The purpose for collecting the data is to determine the safety impact of the CEVMS on the motoring public.

(5) With reference to the Highway Beautification Act, FHWA Texas Division comments: "The use of frontage roads in Texas provides an opportunity for on-premise electronic signs to be in close proximity to Interstate and Primary routes. Newly erected off-premise signs in close proximity to on-premise signs may have the potential to cause distraction and a safety concern."

FHWA would like the department to consider this issue during this regulation process and how the department could implement safeguards for this potential hazard." Lastly, FHWA Texas Division cautions, "In the near future FHWA at the national level will be conducting a research effort to study the potential safety effects of electronic billboards on driver attention and distraction. As a result of this research, revisions to the department regulations may be required."

RESPONSE:

(1) The distractive effect of multiple electronic sign displays is appropriately mitigated through control of the minimum allowable duration for an individual message display (proposed as a minimum eight seconds in these rules). The department concurs with the comment that the timing of a sign change should not be such that a driver traveling at the posted speed limit on a particular route would be exposed to each sign encountered being in transition during the trip. Section 21.163(g)(2) adequately provides a means to remedy this situation, should it occur, by requiring identification of an emergency point of contact with the ability to adjust the sign in the event of this type of malfunction. No change to this section is made as a result of these comments.

(2) The department agrees that spacing of electronic signs

1 should not be less restrictive than the minimum standard
2 established under the Federal-State Agreement. Section 21.153,
3 Spacing of Signs, imposes a stricter standard for spacing that
4 is three times (300 feet) the minimum established in the
5 Federal-State Agreement (100 feet). FHWA's comment is noted,
6 but in lieu of further action on the rules as proposed, the
7 department will apply the existing stricter spacing standard and
8 defer to more restrictive standards as may be required by
9 municipalities.

10
11 (3) The department agrees with the need for clarification of
12 the word "cycle" or its elimination from the rules. The
13 department has eliminated paragraph (4) of §21.163(e), which
14 contemplated the establishment of a maximum number of
15 advertising messages per cycle, and therefore, the definition is
16 not needed and further change is not made.

17
18 (4) The department agrees with the need for tracking data for
19 accidents in locations in which CEVMS are erected. A contract
20 with an independent engineering firm should be obtained that
21 will monitor and compare traffic accidents before and after the
22 construction of CEVMS for a period of three years. As FHWA will
23 be conducting research to study the potential safety effects of
24 electronic billboards on driver attention and distraction, which
25 may result in revisions to department rules, the department will

1 comply with any required revisions based on the FHWA safety
2 study. No change is made as a result of this comment.

3
4 (5) The department agrees with the general concern about
5 distractive effects of exempt on-premise signs. Monitoring of
6 traffic accidents that occur near electronic signs will provide
7 the necessary statistical foundation to revise the rules as
8 necessary. No change is made as a result of this comment.

9
10 **COMMENT:**

11 Senator John Carona, chairman of the Senate Committee on
12 Transportation and Homeland Security, commented by written reply
13 that there is a fear that the signs violate the Highway
14 Beautification Act and would result in a 10 percent reduction in
15 federal funds.

16
17 **RESPONSE:**

18 The department's primary responsibility is to enforce federal
19 and state highway-beautification laws in strict compliance with
20 the spirit and intent as determined by our federal partners with
21 the FHWA. The FHWA has commented specifically to verify that
22 these rules, as proposed, do not violate the state-federal
23 agreement and therefore do not subject Texas federal
24 transportation funds to the risk of being sanctioned for
25 noncompliance.

1

2 **COMMENT:**

3 Approximately 50 form letters from the general public were
4 received opposing LED billboards in Texas: "Thank you for
5 listening to my concerns. I am very opposed to LED billboards
6 in Texas and hope you will help stop them from coming to my
7 community."

8

9 **RESPONSE:**

10 The commenters offered a general opinion in opposition to the
11 rules, as proposed, with no further recommendation for
12 substantive revision. As previously stated, the department is
13 considering adoption of the rules to provide for local control
14 and discretion over the regulation of electronic off-premise
15 outdoor advertising signs. The comments are noted and no
16 additional action affecting the substance of these rules as
17 proposed is made as a result of these comments.

18

19 **COMMENTS:**

20 Approximately 50 form letters from the general public were
21 received in favor of LED billboards stating that "I do not work
22 in the billboard business, but I read and use them everyday to
23 find where to shop, where to buy gas or for public service
24 messages so important to our community."

25

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 350 personal letters were received from the general public. The majority of those who commented from the general public urged a "no" vote by the Commission.

RESPONSE:

The commenters offered a general opinion in opposition to the rules, as proposed, with no further recommendation for substantive revision. As previously stated, the department is considering adoption of the rules to provide for local control and discretion over the regulation of electronic off-premise outdoor advertising signs. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENT:

One hundred and forty-five form letters were received from sign-industry employees "in favor" of the proposed rule amendments.

1 A common comment made in these letters is: "Everyday our
2 business helps to stimulate the economy with the services we
3 supply ... billboard advertising."

4
5 **RESPONSE:**

6 The commenters offered a general opinion in favor of the rules,
7 as proposed, with no further recommendation for substantive
8 revision. The comments are noted and no additional action
9 affecting the substance of these rules as proposed is made as a
10 result of these comments.

11
12 **COMMENTS:**

13 Ten form letters were received from Lamar Advertising "in favor"
14 of the proposed rule amendments. The regulated industry stated,
15 "I am a Business Operator who would like to be given the
16 opportunity to at least be offered the availability to
17 Electronic Billboard usage."

18
19 **RESPONSE:**

20 The commenters offered a general opinion in favor of the rules,
21 as proposed, with no further recommendation for substantive
22 revision. The comments are noted and no additional action
23 affecting the substance of these rules as proposed is made as a
24 result of these comments.

COMMENTS:

Approximately 50 form letters were received from Clear Channel "in favor" of the proposed rule amendments. The regulated industry stated, "I support the proposed rule changes that would allow Texas cities to have electronic or digital billboards within their jurisdiction because everyday billboard advertising helps stimulate the economy."

RESPONSE:

The commenters offered a general opinion in favor of the rules, as proposed, with no further recommendation for substantive revision. The comments are noted and no additional action affecting the substance of these rules as proposed is made as a result of these comments.

COMMENTS:

Approximately 50 letters "in favor" of the proposed rule changes were received from the following businesses: Ad Impressions, Inc., Alamo Outdoor Signs, CBS Outdoor, Clear Channel, Lamar Advertising, Lopez Negrete Communications, Media Strategies, Outdoor Advertising Association of America, Inc., and RMG Outdoor Incorporated.

RESPONSE:

The commenters offered a general opinion in favor of the rules,

1 as proposed, with no further recommendation for substantive
2 revision. The comments are noted and no additional action
3 affecting the substance of these rules as proposed is made as a
4 result of these comments.

5
6 **COMMENT:**

7 The President of Outdoor Advertising Association of Texas, Lee
8 Vela, submitted the following written comments to proposed new
9 §21.163.

10
11 (1) Section 21.163(c)(1), Location of Electronic Signs – The
12 rule should be amended to reflect the division of jurisdiction.
13 Change the first sentence to read "electronic signs may be
14 located within the corporate limits."

15
16 (2) Section 21.163(c)(2), Location of Electronic Signs –
17 Proposes eliminating as a method to minimize conflict between
18 the industry and the department and to eliminate any unnecessary
19 burden on taxpayers.

20
21 (3) Section 21.163(d)(2), Upgrading an Electronic Sign – Amend
22 the rule to state, "a structure on a legally conforming location
23 as determined by department rule may be modified to an
24 electronic sign if a new permit is obtained."

(4) Section 21.163(e)(4), Eligible Electronic Signs – Remove this subsection. Should there be a compelling reason to control the number of messages.

(5) Section 21.163(g)(2), Owner Responsibilities – Subsection is cumulative and unnecessary. Move this subsection and relocate the requirement of the sign owner to provide contact information to subsection (g)(3).

(6) Section 21.163(g)(2), Owner Responsibilities – The time allowed for a sign company to respond to a departmental contact should be extended from one hour to 24 hours, as an adjustment (to intensity) would be made prior to the next evening.

RESPONSE:

(1) Given that these rules apply only to regulated highways, the proposed revision is a matter of editorial preference and has no affect on the intent or meaning of the rule as proposed. No change is made as a result of this comment.

(2) The 1,500 foot spacing criteria for relocation of an electronic sign is intended to decrease the distractive effect of adjacent electronic signs and enhance the safety of the traveling public. The comment is noted and §21.163 is revised to clarify that the 1,500 foot spacing criteria applies to

spacing off-premise electronic signs and therefore the spacing criteria in §21.160 will apply to relocations adjacent to non-electronic off-premise signs.

(3) The department acknowledges that the primary mechanism for effective control of outdoor advertising is the elimination of non-conforming signs over time. It is the intent of the rules as proposed to prohibit any consideration for the conversion of a non-conforming sign to an electronic display. Paragraph (2) of new §21.163(d), is revised to provide that "a legally conforming sign may be modified to an electronic sign if a new permit for the electronic sign is obtained from both the municipality and the department."

(4) The distractive effect of multiple electronic sign displays is appropriately mitigated through control of the minimum allowable duration for an individual message display (proposed as a minimum eight seconds in these rules). The department concurs with the comment that controlling the number of displays per cycle provides no safety benefit and paragraph (4) of §21.163(e) is removed.

(5) The department does not agree that paragraph (2) of §21.163(g) should be removed. Emergency contact information is essential for a prompt response and remediation of malfunctions

1 in order to insure public safety.

2
3 (6) The department concurs with the comment and paragraph (3)
4 of §21.163(g) is revised to provide for a 12-hour response time.

5
6 **COMMENTS:**

7 Richard H. Erickson, president of Southwest Media Exchange,
8 opposes the proposed rule changes citing safety and distraction
9 concerns, financial windfall for the regulated industry, with
10 little or no benefit to the State of Texas and its citizens.

11
12 **RESPONSE:**

13 Mr. Erickson offered a general opinion in opposition to the
14 rules, as proposed, with no further recommendation for
15 substantive revision. As previously stated, the department is
16 considering adoption of the rules to provide for local control
17 and discretion over the regulation of electronic off-premise
18 outdoor advertising signs. The comments are noted and no
19 additional action affecting the substance of the rules as
20 proposed is made as a result of the comment.

21
22 **COMMENTS:**

23 During the public-comment period, 19 comments were received from
24 public officials. Public officials "in favor" of the proposed
25 rule changes include state representatives Joseph Pickett

(District 79), Dwayne Bohac (District 138), and Kevin Bailey (District 140), City of Plano Executive Director Frank F. Turner, and City of Victoria Chief of Police Bruce Ure. Their comments referenced safe and effective use of technology, AMBER/Silver alerts, emergency responses, support for local control, and the potential for economic catalyst in communities who choose to allow them.

RESPONSE:

Federal and state rules are constructed to defer to a stricter, local standard conditioned upon meeting the minimum federal standards. New §21.163 adequately establishes local authority to make stricter rules.

COMMENT:

Public officials submitting comments in opposition to the rules include Senate Committee on Transportation and Homeland Security Chairman John Carona, state representatives Rob Eissler (District 15), Eddie Rodriguez (District 51), and Patricia Harless (District 126); Travis County Judge Samuel T. Biscoe, Travis County Commissioner (Precinct 2) Sarah Eckhardt, Harris County Commissioner (Precinct 4) Jerry Eversole, Harris County Attorney Mike Stafford, Fort Worth Mayor Mike Moncrief, City South Management Authority Presiding Officer Ed Garza, and former Mayor of University Park Barbara Hitzelberger Wooten.

1 Their concerns included safety and hazards, distractions,
2 environmental damage, increased costs of highway construction,
3 lighting, compliance with the federal HBA, threat of lost
4 federal highway funds for failure to control outdoor
5 advertising, honoring the memory of Lady Bird Johnson and her
6 legacy of highway beautification, relocation costs, visual
7 pollution, and delay in enacting the rules. Commenters
8 expressed concerns that the cost of eminent domain would be
9 adversely affected due to the increased cost of an electronic
10 sign rather than a regular billboard.

11
12 **RESPONSE:**

13 The department's primary responsibility is to enforce federal
14 and state highway-beautification laws in strict compliance with
15 the spirit and intent as determined by our federal partners with
16 the FHWA. The FHWA has commented specifically to verify that
17 these rules, as proposed, do not violate the federal-state
18 agreement and therefore do not subject Texas federal
19 transportation funds to the risk of being sanctioned for
20 noncompliance. The department is acting in a regulatory
21 capacity to consider new technology that is being used in the
22 industry and in other states. Eminent domain costs are
23 comprised of numerous variables. The department will monitor
24 whether electronic signs increase eminent domain costs and may
25 make appropriate rule changes in the future as necessary to

adequately address those costs.

COMMENT:

Harris County Attorney Mike Stafford expressed concern about the proposed rules with regard to increased condemnation costs, fairness to residents in unincorporated areas, the impact of billboards on costs of public-works projects, and support for local control to uphold community standards as established through city ordinances.

RESPONSE:

Federal and state rules are constructed to defer to a stricter, local standard conditioned upon meeting the minimum federal standards. New §21.163 adequately establishes local authority to make stricter rules without the need for the recommended additional language.

COMMENT:

State Representative (District 52) Mike Krusee supports the proposed rule changes, embraces the safe and effective use of technology, and commended the department for its foresight and economic sense.

RESPONSE:

The commenter offered a general opinion in favor of the rules,

1 as proposed, with no further recommendation for substantive
2 revision. The comments are noted and no additional action
3 affecting the substance of these rules as proposed is made as a
4 result of these comments.

5
6 **COMMENT:**

7 City of Austin Mayor Will Wynn proposed that the rules should
8 clarify that any existing non-conforming static sign may not be
9 converted to a changeable electronic billboard without municipal
10 approval. Mayor Wynn urged the commission to delay action on
11 this critical issue until FHWA has released results of its
12 study. The City of Austin also raised an issue that it would
13 "inherit" signs allowed in rural areas in which the city later
14 expands its extraterritorial jurisdiction (ETJ).

15
16 **RESPONSE:**

17 It is the intent of the rules as proposed to prohibit any
18 consideration for the conversion of a non-conforming sign to an
19 electronic display. The comment is noted and §21.163(d)(2) of
20 the rules as proposed is revised to clarify that to modify an
21 existing sign, a new permit will be required from both the
22 municipality and the state for the electronic sign.

23
24 On September 25, 2007, the FHWA published an internal memorandum
25 concluding that "Changeable message signs, including Digital/LED

1 Display CEVMS, are acceptable for conforming off-premise signs,
2 if found to be consistent with the Federal-State Agreement and
3 with acceptable and approved state regulations, policies and
4 procedures." Previous study results procured by the FHWA on
5 safety issues pertaining to CEVMS have been non-conclusive.

6
7 The proposed rules allow electronic billboards only within
8 cities and in the ETJ, and only if the city allows them and has
9 extended its sign ordinance to the ETJ area. Electronic signs
10 are prohibited in areas outside of a city or a city's ETJ, so a
11 city could not "inherit" an off-premise electronic billboard.

12
13 **COMMENT:**

14 Comments were received from the public and others (including
15 Harris County) that claimed residents in the ETJ have no voice
16 in city government and, therefore, it is unfair for the city to
17 determine that electronic signs can be located there.

18
19 **RESPONSE:**

20 The Legislature has given cities their respective powers
21 relating to property located within ETJ's, including the power
22 to regulate signs. With respect to powers in the ETJ, and
23 whether a city should have them without residents having a
24 voice, the department is without authority to act. Therefore,
25 no changes are made as a result of these comments.

1

2 **COMMENT:**

3 City of Plano Executive Director Frank F. Turner proposed that
4 language could be more explicit to §21.163(d), Upgrading an
5 Electronic Sign. Mr. Turner offered the general comment that
6 rules should be modified to clearly address cities that have
7 non-conforming signs and no longer issue permits for new
8 billboards.

9

10 **RESPONSE:**

11 It is the intent of the rules as proposed to prohibit any
12 consideration for the conversion of a non-conforming sign to an
13 electronic display. In accordance with new §21.163(h), the
14 department will only grant a permit for an electronic sign if
15 the application for the permit has attached to it a certified
16 copy of written permission for the electronic sign from the
17 municipality.

18

19 **COMMENT:**

20 City of Fort Worth Mayor Mike Moncrief offered amendments to the
21 proposed rules to ensure that the maximum degree of protection
22 and control on the part of municipalities is retained. The City
23 of Fort Worth provided edits to the following sections:

24

25 (1) Section 21.150(b)(3) – "... if the sign is located within the

jurisdiction of a municipality with a population of more than 500,000 that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality."

(2) Section 21.163(c)(1), Location of electronic signs – "Electronic signs may only be located, relocated or upgraded along a regulated highway within the corporate limits of a municipality or within the extraterritorial jurisdiction of a municipality that pursuant to state law has extended its municipal regulation to include that area and is allowed by the municipality's sign and zoning ordinances."

(3) Section 21.163(d)(3), Upgrading an electronic sign – "lighting shall not be added to or used to illuminate a sign if prohibited by the municipality's sign or zoning ordinances."

(4) Section 21.163(h)(2), Granting permits – "The department will grant a permit for an electronic sign if the application for the permit is allowed by the permitting municipality's sign or zoning ordinances; and has attached to it a certified copy of the permit for the located, relocated or upgraded electronic sign."

RESPONSE:

(1) The revision offered by the City of Fort Worth proposes to reduce the population criteria of 1.9 million to a level of 500,000. The 1.9 million-population requirement is explicit in Transportation Code, §391.068(d) as added by HB 2944, 80th Legislature, 2007. The commission is without authority to make the requested change.

(2) The comment is noted and §21.163(c)(1) of the rules as proposed is revised to reflect the suggested change.

(3) The comment is noted and paragraph (3) of §21.163(d) is added to reflect the suggested change.

(4) The comments are noted and §21.163(h) as proposed has been revised to clarify that a municipality's permission is required for any proposed electronic signs.

COMMENT: During the public-comment period, 18 comments, mainly expressing opposition, were received from association and interest groups including Weekley Development, Hamilton Pool Road Scenic Corridor Coalition, Bull Creek Foundation, Houston Northwest Chamber of Commerce, Crow Holdings, North Houston Association Board of Directors, Greenspoint District, Scenic Texas Inc., Keep Pearland Beautiful, and the San Antonio Conservation Society. Concerns included visual pollution,

1 preservation of scenic vistas, compliance with the 1972 State
2 Federal Agreement, safety of LED technology, and lighting. Some
3 of the comments concerned the brightness of the signs and that
4 the signs should automatically dim with changing light
5 conditions. Other comments concerned the cost of the
6 electricity used to light these types of signs.

7
8 **RESPONSE:**

9 The commenters offered a general opinion in opposition to the
10 rules, as proposed, with no express recommendation for
11 substantive revision. The comments are noted. Section
12 §21.163(f) contains a requirement that an electronic sign will
13 automatically adjust the intensity of its display according to
14 natural ambient light conditions. As previously stated, the
15 department is considering adoption of the rules to provide for
16 local control and discretion over the regulation of electronic
17 off-premise outdoor advertising signs. No change to the
18 substance of these rules as proposed is made as a result of
19 these comments.

20
21 **COMMENT:**

22 Scenic Texas Inc. President Don Glendenning and Scenic Texas
23 Inc. Executive Vice President and Policy Director Margaret Lloyd
24 submitted written comments (letter, Nov. 28, 2007) expressing
25 "strong opposition" and that the proposed LED rules should not

1 be adopted until the first three issues listed below are
2 resolved in favor of allowing the technology on Texas highways:

3
4 (1) Scenic Texas stated that the department should formally
5 assess the potential cost to taxpayers of a change in policy
6 before allowing a single LED billboard.

7
8 (2) Scenic Texas stated the applications of this technology
9 must be found to be safe either by FHWA study or by a
10 government-sponsored study of its effects on driver safety.
11 Scenic Texas provided a report ("A Critical, Comprehensive
12 Review of Two Studies Recently Released by the Outdoor
13 Advertising Association of America," Jerry Wachtel, dated Oct.
14 18, 2007) that was prepared for the Maryland State Highway
15 Administration. The Wachtel report raises serious questions
16 regarding the two studies offered by the Outdoor Advertising
17 Association ("A Study of the Relationship between Digital
18 Billboards and Traffic Safety in Cuyohoga County, Ohio" (Tantala
19 Associates, July 2007)) and "Driving Performance and Digital
20 Billboards: Final Report" (Lee, McElheny and Gibbons, Virginia
21 Tech Transportation Institute Center for Automotive Safety
22 Research, March 2007).

23
24 (3) The proposed rules are in opposition to the department's
25 own vision statement and will degrade the aesthetic beauty of

our highway system.

(4) Also, Scenic Texas would like for electronic signs to be allowed only after the city has expressly voted to allow them.

RESPONSE:

(1) As the cost of constructing a CEVMS is obviously the responsibility of the sign owner, the department assumes the comment is directed to the proposed relocation of a CEVMS resulting from the displacement of a sign due to the right-of-way needs of a transportation project. The department is acting in a regulatory capacity to consider new technology that is being used in the industry and in other states. Eminent domain costs are comprised of numerous variables. The department will monitor whether electronic signs increase eminent domain costs and may make appropriate rule changes in the future as necessary to adequately address those costs. No change to the substance of these rules as proposed is made as a result of these comments.

(2) The FHWA has advised that they will conduct research to study the potential safety effects of electronic billboards on driver attention and distraction. The department will comply with any FHWA required revisions resulting from the safety study. No change to the substance of these rules as proposed is

1 made as a result of these comments.

2
3 (3) The department does not agree with the comment that the
4 proposed rules are in opposition to the department's own vision
5 statement and will degrade the aesthetic beauty of the state
6 highway system. The department's "vision" is to be a
7 progressive state transportation agency recognized and respected
8 by the citizens of Texas by: (1) providing comfortable, safe,
9 durable, cost-effective, environmentally sensitive, and
10 aesthetically appealing transportation systems that work
11 together; (2) ensuring a safe and desirable workplace which
12 creates a diverse team of all kinds of people and professions;
13 (3) using efficient and cost-effective work methods that
14 encourage innovation and creativity; and (4) promoting a higher
15 quality of life through partnerships with the citizens of Texas
16 and all branches of government by being receptive, responsible,
17 and cooperative.

18
19 The department is responsible for the regulation of the orderly
20 and effective display of outdoor advertising along a regulated
21 highway within the state of Texas. The department assumes that
22 the comment is referring to vision item (1) set forth above.
23 The department goal of providing aesthetically appealing
24 transportation systems is not precluded by allowing the
25 regulated industry to incorporate the latest technology for

1 their business. The comment is noted and no additional action
2 affecting the substance of the rules as proposed is made as a
3 result of the comment.

4
5 (4) Section 21.163(h) insures that a permit for an electronic
6 billboard will only be granted by the state if the permit is
7 accompanied by a certified copy of permission by the city. If a
8 city did not address electronic billboards in its sign code, or
9 did not have a sign code, permission would still be required,
10 signed and certified by the appropriate city official. Such
11 protections are seen as sufficient to insure that no
12 unauthorized electronic billboards are erected. The commission
13 has no authority to require cities to submit approval of
14 electronic signs to the voters of the cities. No change to the
15 substance of these rules as proposed is made as a result of
16 these comments.

17
18 **COMMENTS:**

19 Frank Sturzl, executive director for Texas Municipal League,
20 strongly supports the principle of local control in the
21 regulation of usage, timing, structure size, and placement of
22 electronic billboards. He provided the following proposed
23 language:

24
25 "§21.163(d) Upgrading an electronic sign.

(1) lighting shall not be added to or used to illuminate signs that are nonconforming under state law or any applicable municipal regulations governing a municipality's limits or extraterritorial jurisdiction; and

(2) a sign that is conforming under state law or any applicable municipal regulations governing a municipality's limits or extraterritorial jurisdiction may be modified to an electronic sign if a new permit is obtained through the process described in these rules, including obtaining permission to upgrade to an electronic sign from the municipality with jurisdiction over the sign.

(h) Granting permits. The department will grant a permit for a new electronic sign or for a sign that is conforming under state law or any applicable municipal regulations to be upgraded to an electronic sign if the application for the permit:

(1) satisfies the requirements of this subchapter; and

(2) has attached to it:

(A) a certified copy of the permit issued by the municipality that gives permission for the new electronic sign or to upgrade a sign that is conforming under state law or any applicable municipal regulations to an electronic sign; or

(B) if the municipality does not issue permits, a certified copy of written permission for the new electronic sign or to upgrade a sign that is conforming under state law or any applicable municipal regulations to an electronic sign from the

1 municipality."

2
3 **RESPONSE:**

4 While the department is of the opinion that the rules as
5 proposed adequately address the issue of local control, the
6 department has revised §21.163(c)(1), §21.163(d)(2), and
7 §21.163(h) to clarify the necessity for prior municipal approval
8 of any electronic sign.

9
10 **COMMENT:**

11 City of Houston Mayor Bill White supports language submitted by
12 the Texas Municipal League (TML), clarifying "that TxDOT may not
13 issue a permit for a new electronic sign or to upgrade a
14 standard sign structure to an electronic sign structure unless a
15 permit or express permission by the city local authority to
16 become an electronic sign structure has been provided."

17
18 He stated that proposed new §21.163(h)(2) "could be interpreted
19 as allowing a sign-structure owner an opportunity to upgrade a
20 standard structure to an electronic signage structure by
21 submitting to TxDOT the municipal permit issued for the original
22 structure. The City should retain authority to determine
23 whether original signage structures can be upgraded to
24 electronic signage structures, should TxDOT alter its current
25 position and allow electronic signage."

1
2 Additionally, Mayor White proposed language that "clarifies our
3 ability to exercise more restrictive rules than those imposed
4 with this department ruling." Specifically, the proposal from
5 the City of Houston states: "These rules shall not be
6 interpreted to restrict or limit the authority of municipalities
7 to continue to prohibit Electronic Signs or to adopt more
8 stringent ordinances for such signage that is imposed under
9 these rules."

10
11 **RESPONSE:**

12 While the department is of the opinion that the rules as
13 proposed adequately address the issue of local control, the
14 department has revised §21.163(c)(1), §21.163(d)(2), and
15 §21.163(h) to clarify the necessity for prior municipal approval
16 of any electronic sign. Nothing in the proposed rules limits a
17 municipality's ability to exercise more restrictive rules than
18 those imposed by the department. A municipality's authority is
19 derived from the Legislature and the department by rule cannot
20 limit or expand such authority.

21
22 In addition, minor grammatical changes were made to new §21.163
23 to improve readability.

24
25 STATUTORY AUTHORITY

1 The amendments and new section are adopted under Transportation
2 Code, §201.101, which provides the commission with the authority
3 to establish rules for the conduct of the work of the
4 department, and more specifically, Transportation Code,
5 §391.032, which grants the commission the authority to regulate
6 the orderly and effective display of outdoor advertising along a
7 regulated highway within the state and Transportation Code,
8 §394.004, which grants the commission the authority to promote
9 and control the reasonable, orderly, and effective display of
10 outdoor advertising on all highways and roads.

11
12 CROSS REFERENCE TO STATUTE

13 Transportation Code, §§391.021, 391.022, 391.032 and 394.004.

SUBCHAPTER I. REGULATION OF SIGNS ALONG INTERSTATE AND PRIMARY
HIGHWAYS

§21.142. Definitions. The following words and terms, when used
in this subchapter, shall have the following meanings, unless
the context clearly indicates otherwise.

(1) Act--Transportation Code, Chapter 391, concerning
beautification of a regulated highway.

(2) Commercial or industrial activities--Those activities
customarily permitted only in zoned commercial or industrial
areas except that none of the following shall be considered
commercial or industrial:

(A) outdoor advertising structures;

(B) agricultural, forestry, ranching, grazing, farming,
and related activities, including, but not limited to, temporary
wayside fresh produce stands;

(C) activities not:

(i) housed in a permanent building or structure;

(ii) having an indoor restroom, telephone, running
water, functioning electrical connections, and adequate heating;
or

(iii) having permanent flooring other than material
such as dirt, gravel, or sand;

(D) activities not housed in a permanent building that

1 is visible from the traffic lanes of the main-traveled way;

2 (E) activities conducted in a building primarily used
3 as a residence;

4 (F) railroad right of way;

5 (G) activities that do not have a portion of the
6 regularly used buildings, parking lots, storage or processing
7 areas within 200 feet from the edge of the right of way;

8 (H) activities conducted only seasonally;

9 (I) activities conducted in a building having less than
10 300 square feet of floor space devoted to the activities;

11 (J) activities that do not have at least one person who
12 is at the activity site, performing work, an average of at least
13 30 hours per week or at least five days per week;

14 (K) activities which have not been open for at least 90
15 days;

16 (L) recreational facilities such as campgrounds, golf
17 courses, tennis courts, wild animal parks, and zoos, except for
18 the portion of the activities occupied by permanent buildings
19 which otherwise meet the criteria in this subsection and parking
20 lots;

21 (M) apartment houses or residential condominiums;

22 (N) areas used by public or private preschools,
23 secondary schools, colleges and universities for education or

1 recreation (this does not preclude trade schools or corporate
2 training campuses);

3 (O) quarries or borrow pits, except for any portion of
4 the activities occupied by permanent buildings which otherwise
5 meet the criteria in this subsection and parking lots; and

6 (P) cemeteries, or churches, synagogues, mosques, or
7 other places primarily used for worship.

8 (3) Commission--The Texas Transportation Commission.

9 (4) Conforming sign--A sign which is lawfully in place
10 and complies with size, lighting, and spacing requirements and
11 any other lawful regulations pertaining thereto.

12 (5) Department--The Texas Department of Transportation.

13 (6) Director--The director of the Right of Way Division
14 of the department.

15 (7) District engineer--The chief administrative officer
16 in charge of a district of the department.

17 (8) Electronic sign--A sign, display, or device that
18 changes its message or copy by programmable electronic or
19 mechanical processes.

20 (9) [~~+8+~~] Erect--To construct, build, raise, assemble,
21 place, affix, attach, embed, create, paint, draw, or in any
22 other way bring into being or establish.

23 (10) [~~+9+~~] Freeway--A divided highway with frontage roads

1 or full control of access. A proposed freeway is designated a
2 freeway for the purposes of this subchapter when the
3 construction contract is awarded, regardless of whether the
4 main-traveled way is open to the public.

5 (11) [~~(10)~~] Interchange--A system of interconnecting
6 roadways in conjunction with one or more grade separations that
7 provides for the movement of traffic between two or more
8 roadways or highways on different levels. A proposed
9 interchange is designated an interchange for the purposes of
10 this subchapter when the construction contract is awarded,
11 regardless of whether it is open to the public.

12 (12) [~~(11)~~] Intersection--The common area at the junction
13 of two roadways as defined in Transportation Code, §541.303.

14 (13) [~~(12)~~] Interstate highway system--That portion of
15 the national system of interstate and defense highways located
16 within the State of Texas which now or hereafter may be so
17 designated officially by the commission and approved pursuant to
18 23 United States Code §103.

19 (14) [~~(13)~~] License--An outdoor advertising license
20 issued by the department pursuant to the provisions of
21 Subchapter C of the Act.

22 (15) [~~(14)~~] Main-traveled way--The traveled way of a
23 highway that carries through traffic. In the case of a divided

1 highway, the traveled way of each of the separate roadways for
2 traffic in opposite directions is a main-traveled way. It does
3 not include such facilities as frontage roads, turning roadways,
4 or parking areas.

5 (16) [~~+15+~~] National Highway System--That portion of
6 connected main highways located within the State of Texas which
7 now or hereafter may be so designated officially by the
8 commission and approved pursuant to 23 United States Code §103.

9 (17) [~~+16+~~] Nonconforming sign--A lawfully erected sign
10 that does not comply with the provisions of a law or rule
11 promulgated at a later date, or which later fails to comply with
12 a law or rule due to changed conditions.

13 (18) [~~+17+~~] Nonprofit sign--A sign erected and maintained
14 by a nonprofit organization in a municipality or the
15 extraterritorial jurisdiction of a municipality if the sign
16 advertises or promotes only the municipality or another
17 political subdivision whose jurisdiction is in whole or in part
18 concurrent with the municipality.

19 (19) [~~+18+~~] Outdoor advertising or sign--An outdoor sign,
20 display, light, device, figure, painting, drawing, message,
21 plaque, placard, poster, billboard, logo or symbol, or other
22 thing which is designed, intended, or used to advertise or
23 inform, if any part of the advertising or information contents

1 is visible from any place on the main-traveled way of a
2 regulated highway.

3 (20) [~~+19~~] Permit--The authorization granted for either
4 the erection and/or maintenance, of an outdoor advertising sign
5 as provided in the Act, §391.068.

6 (21) [~~+20~~] Person--An individual, association,
7 partnership, limited partnership, trust, corporation, or other
8 legal entity.

9 (22) [~~+21~~] Primary system or federal-aid primary system--
10 -That portion of connected main highways which were designated
11 by the commission as the federal-aid primary system in existence
12 on June 1, 1991 and any highway which is not on that system but
13 which is on the National Highway System.

14 (23) [~~+22~~] Public park--A public park, forest,
15 playground, nature preserve, or scenic area designated and
16 maintained by a political subdivision or governmental agency.

17 (24) [~~+23~~] Regulated highway--A highway on the
18 interstate highway system or primary system.

19 (25) [~~+24~~] Removed--The dismantling and removal of a
20 substantial portion of the parts and materials of a sign or sign
21 structure from the view of the motoring public. The term shall
22 not include the temporary removal of a sign face for operational
23 reasons.

1 (26) [~~+25~~] Rest area--An area of public land designated
2 by the department as a rest area, comfort station, picnic area,
3 or roadside park.

4 (27) [~~+26~~] Sign face--The part of the sign that contains
5 the message or informative contents and is distinguished from
6 other parts of the sign and other sign faces by separation
7 borders or decorative trim. It does not include lighting
8 fixtures, aprons, and catwalks unless they display part of the
9 message or informative contents of the sign.

10 (28) [~~+27~~] Sign structure--All of the interrelated parts
11 and materials, such as beams, poles, braces, apron, catwalk, and
12 stringers, that are used, designed to be used, or are intended
13 to be used to support or display a sign face.

14 (29) [~~+28~~] Traveled way--That portion of the roadway
15 used for the movement of vehicles, exclusive of shoulders.

16 (30) [~~+29~~] Turning Roadway--A connecting roadway for
17 traffic turning between two intersection legs of an interchange.

18 (31) [~~+30~~] Unzoned commercial or industrial area--

19 (A) An area along the highway right of way which has
20 not been zoned under authority of law, which is not
21 predominantly used for residential purposes, and which is within
22 800 feet, measured along the edge of the highway right of way,
23 of, and on the same side of the highway as, the principal part

1 of at least two adjacent recognized commercial or industrial
2 activities. To be considered an unzoned commercial or
3 industrial area, the following requirements must be met.

4 (i) A portion of the regularly used buildings,
5 parking lots, storage or processing areas where each respective
6 business activity is conducted must be within 200 feet of the
7 highway right of way and the permanent building where the
8 activity is conducted must be visible from the main-traveled
9 way.

10 (ii) To be considered adjacent, there must be no
11 separation of the regularly used buildings, parking lots,
12 storage or processing areas of the two activities by vacant
13 lots, undeveloped areas over 50 feet wide, roads, or streets.

14 (iii) Two activities may occupy one building as long
15 as each has 300 square feet of floor space dedicated to that
16 activity and otherwise meets the definition of a commercial or
17 industrial activity. There must be separation of the two
18 activities by a dividing wall, separate ownership, or other
19 distinctive characteristics. A separate product line offered by
20 one business will not be considered two activities.

21 (B) An unzoned commercial or industrial area is more
22 specifically identified as follows.

23 (i) The area to be considered, based upon the

1 qualifying activities, is 1,600 feet (800 feet on each side)
2 plus the actual or projected frontage of the commercial or
3 industrial activities, measured along the highway right of way
4 by a depth of 660 feet in accordance with §21.144(b) of this
5 title (relating to Measurements).

6 (ii) The area shall be located on the same side of
7 the highway as the principal part of the qualifying activities.

8 (iii) The area must be considered as a whole prior to
9 the application of the test for predominantly residential.

10 (iv) An area shall be considered to be predominantly
11 residential if more than 50% of the area is being used for
12 residential purposes. Roads and streets with residential
13 property on both sides shall be considered as being used for
14 residential purposes. Other roads and streets will be
15 considered nonresidential.

16 (32) [~~+31+~~] Visible--Capable of being seen, whether
17 legible or not, without visual aid by a person with normal
18 visual acuity.

19 (33) [~~+32+~~] Zoned commercial or industrial area--An area
20 designated, through a comprehensive zoning action, for general
21 commercial or industrial use by a political subdivision with
22 legal authority to zone. The following areas are not zoned
23 areas:

(A) areas that permit limited commercial or industrial activities incident to other primary land uses;

(B) areas designated for and created primarily to permit outdoor advertising structures along a regulated highway;

(C) unrestricted areas; and

(D) small parcels or narrow strips of land that cannot be put to ordinary commercial or industrial use and are designated for a use classification different from and less restrictive than that of the surrounding area.

§21.150. Permits.

(a) Eligibility. Except as provided in subsection (1) of this section, a permit under this section may only be issued to a person holding a valid license issued pursuant to §21.149 of this title (relating to Licenses).

(b) Application and issuance.

(1) Except as provided in §21.151 of this title (relating to Local Control) a person who desires a permit to erect or maintain a sign along a regulated highway must file an application in a form prescribed by the department, which shall include, but not be limited to:

(A) the complete name and address of the applicant;

(B) the proposed location and description of the sign;

1 (C) the complete legal name and address of the
2 designated site owner;

3 (D) verification of the applicant's nonprofit status if
4 the sign is a nonprofit sign; and

5 (E) additional information the department deems
6 necessary.

7 (2) No permit may be approved unless the applicant has
8 obtained written permission from the owner of the designated
9 site. The department may provide a space on the permit
10 application for this signature or the applicant may provide a
11 copy of the written lease for the site or a consent statement in
12 a form prescribed by the department. The signature must be the
13 signature of the property owner or the owner's duly authorized
14 representative. The owner's permission operates as permission
15 for the life of the permit, unless the owner provides a written
16 statement that permission for the maintenance of the sign has
17 been withdrawn and documentation showing that the lease allowing
18 the sign has been terminated in accordance with the terms of the
19 lease agreement or through a court order. If the sign owner
20 disputes the lease termination in court with the owner, the
21 department will not cancel the permit until a court order is
22 provided.

23 (3) The application must be signed under oath by the sign

owner and filed with the district engineer in whose district the sign is to be erected or maintained, and shall be accompanied by the prescribed fee or fees and, if the sign is located within the jurisdiction of a municipality with a population of more than 1.9 million that is exercising its authority to regulate outdoor advertising, a certified copy of the permit issued by the municipality.

(4) An application will not be approved unless the sign for which the permit is requested is located in an unzoned commercial or industrial area or in a zoned commercial or industrial area, and meets all applicable requirements of the sections under this subchapter, or was lawfully in existence when the sign became subject to the Act.

(5) If approved, a copy of the application, endorsed by the district engineer, or designee, and a Texas sign permit plate will be issued to the applicant. Not later than 30 days after erection of the permitted sign, or after the issuance of a permit if the sign is lawfully in existence when the highway along which it is located becomes subject to control by the department, the sign owner shall cause the permit plate to be securely attached to that portion of the sign structure nearest the highway and visible from the main-traveled way. If the permit plate becomes illegible, the department may require that

1 a replacement plate be obtained in accordance with subsection
2 (f) of this section. The plate must be attached and may not be
3 removed from the sign described in the application.

4 (6) The proposed location for a new sign must be
5 identified by the applicant on the ground by a stake or paint
6 with at least two feet of the stake visible above the ground.
7 The stake must be set at the proposed location of the center
8 pole. Staking the site is considered part of the application.
9 Stakes must not be moved or removed until the application is
10 denied, or if approved, until the sign has been erected. The
11 sketch submitted with the application must reflect the location
12 of the center-pole and show the exact location of the sign faces
13 in relation to the center pole.

14 (c) Priority. Permits will be considered on a first-come,
15 first-serve basis. If an application is returned because of
16 errors or incomplete information, other applications received
17 for the same or conflicting sites between the time a denied
18 application is returned to the applicant and the time it is
19 resubmitted, will be considered before the resubmitted
20 application. A second application for a conflicting site may be
21 held until a decision is made on the first application.

22 (d) Renewals.

23 (1) Subject to the terms and location stated in the

1 permit application, a permit issued or renewed under this
2 section shall be valid for a period of one year, provided that
3 the sign is erected and maintained in accordance with the
4 applicable sections under this subchapter. The permitted sign
5 must be erected within one year from the date the original
6 permit is issued in order for a sign permit to be eligible for
7 renewal.

8 (2) A permit issued by the department prior to September
9 6, 1985, must be renewed no later than October 1, of each
10 succeeding year.

11 (3) An annual permit issued subsequent to September 5,
12 1985, must be renewed on or before the anniversary date of the
13 date of issuance.

14 (4) If a sign continues to meet all applicable
15 requirements, a permit holder may renew a permit by filing a
16 written request in a form prescribed by the department and the
17 prescribed renewal fee at the district office serving the county
18 where the sign is located.

19 (e) Transfer.

20 (1) A permit may only be transferred with the written
21 approval of the district engineer. At the time of the transfer,
22 both the transferor and the transferee must hold a valid outdoor
23 advertising license issued pursuant to §21.149 of this title

1 (relating to Licenses), except as provided in subparagraphs (3)-
2 (5) of this subsection.

3 (2) A permit holder who desires to transfer one or more
4 permits must file a written request in a form prescribed by the
5 department and the prescribed transfer fee at the district
6 office serving the county where the sign is located. The
7 transferor and transferee will each be issued a copy of the
8 approved permit transfer form.

9 (3) A permit issued under subsection (1) of this section
10 may be transferred to a nonprofit organization that does not
11 hold a valid outdoor advertising license issued under §21.149 of
12 this title (relating to Licenses) if the permit is transferred
13 for the purpose of maintaining a nonprofit sign.

14 (4) A permit issued under subsection (1) of this section
15 may be transferred for a purpose other than maintaining a
16 nonprofit sign if the transferee holds a valid outdoor
17 advertising license at the time of the transfer.

18 (5) The director will approve the transfer of one or more
19 sign permits from a lapsed outdoor advertising license to a
20 valid outdoor advertising license, with or without the signature
21 of the transferor, if:

22 (A) legal documents showing the sale of the sign are
23 provided; and

1 (B) documents are provided that indicate the transferor
2 is dead or cannot be located.

3 (6) A permit that has an unresolved permit violation,
4 will not be transferred. An unresolved permit violation means
5 that a permit cancellation is impending or a cancellation has
6 been abated pursuant to subsection (k) of this section pending
7 the outcome of a hearing.

8 (f) Replacement. In the event a permit plate is lost or
9 stolen, is missing from the sign structure, or becomes
10 illegible, the sign owner must submit to the district engineer a
11 request for a replacement plate in a form prescribed by the
12 department, together with the prescribed replacement plate fee.

13 (g) Fees.

14 (1) Except as provided in paragraphs (2) and (3) of this
15 subsection, for a permit issued pursuant to this section:

16 (A) the original fee is \$96;

17 (B) the annual renewal fee is \$40;

18 (C) the transfer fee is \$25 per permit up to a maximum
19 of \$2,500 for a single transaction; and

20 (D) the replacement plate fee is \$25.

21 (2) For a nonprofit sign permit:

22 (A) the original fee is \$10 for each sign;

23 (B) the annual renewal fee is \$10 for each sign; and

(C) the transfer fee is waived for the transfer of a permit issued under subsection (1) of this section if the permit is transferred under subsection (e)(3) of this section. Any other permit transfer is subject to the provisions of paragraph (1) of this subsection.

(3) The initial permit fee is \$50 for a sign lawfully in existence which becomes subject to the Act.

(4) A fee prescribed in this subsection is payable by check, cashier's check, or money order, and is nonrefundable.

(5) If a check or money order submitted for fees described in this section is dishonored upon presentment by the department, the permit, renewal, or transfer will be void from inception.

(h) Expiration. A permit automatically expires if:

(1) it is not renewed by the permit holder;

(2) the license under which it was issued expires or is revoked by the department pursuant to §21.149 of this title (relating to Licenses); or

(3) the sign is acquired by the state.

(i) Cancellation. The director may cancel a permit if the sign structure:

(1) is removed;

(2) is not maintained in accordance with applicable

sections under this subchapter or the Act;

(3) is damaged beyond the repair threshold contained in §21.156 of title (relating to Discontinuance of Signs);

(4) is abandoned, as determined by §21.156;

(5) is not built in the location described on the permit application or in accordance with the description of the structure on the permit application;

(6) is built by an applicant who uses false or materially misleading information on the permit application;

(7) is located on property owned by a person who withdraws, in writing, the permission granted pursuant to §21.150(b)(2) of this title (relating to Permits);

(8) is located in an area in which the activity has ceased in accordance with §21.145(b) of this title (relating to Cessation of Activities);

(9) is erected, repaired, or maintained in violation of §21.161 of this title (relating to Destruction of Trees/Violation of Control of Access);

(10) has been made more visible by the permit holder clearing vegetation from the highway right of way in violation of §21.161 of this title; or

(11) does not have permit plates properly attached under §21.150(b) and (f) of this title (relating to Permits).

1 (j) Removal. If a permit expires without renewal, is
2 canceled without reinstatement, or if a sign other than an
3 exempt sign is erected or maintained without a permit, the owner
4 of the involved sign and sign structure shall, upon written
5 notification by the district engineer, remove the sign at no
6 cost to the state.

7 (k) Notice and appeal. Upon determination that a permit
8 should be canceled, the director shall mail by certified mail a
9 notice of cancellation to the address of the record license
10 holder. Notice shall be presumed to be received five days after
11 mailing. The recipient of the notice may provide proof that the
12 notice was not received five days from mailing, in which case,
13 the director of right of way may extend the time for requesting
14 a hearing.

15 (1) The notice shall clearly state:

16 (A) the reason for the cancellation;

17 (B) the effective date of the cancellation; and

18 (C) the right of the permit holder to request an
19 administrative hearing on the question of the cancellation.

20 (2) A request for an administrative hearing under this
21 subsection must be made in writing to the director within 10
22 days of the receipt of the notice of cancellation.

23 (3) If timely requested, an administrative hearing shall

1 be conducted in accordance with §§1.21 et seq. of this title
2 (relating to Contested Case Procedure), and shall serve to abate
3 the cancellation unless and until that cancellation is affirmed
4 by order of the commission.

5 (1) Nonprofit signs.

6 (1) A nonprofit organization may obtain a permit under
7 this section to erect or maintain a nonprofit sign.

8 (2) In order to qualify for a permit issued under this
9 subsection, a sign must comply with all applicable requirements
10 under this subchapter from which it is not specifically
11 exempted.

12 (3) An application for a permit under this section must
13 include, in detail, the content of the message to be displayed
14 on the sign. Prior to changing the message, the permit holder
15 must obtain the approval of the district engineer in whose
16 district the sign is maintained.

17 (4) If at any time the sign ceases to be a nonprofit
18 sign, the permit will be subject to cancellation pursuant to
19 subsection (i) of this section.

20 (5) If the holder of a permit issued under this
21 subsection loses its nonprofit status or wishes to advertise or
22 promote something other than the municipality or political
23 subdivision, an outdoor advertising license must be obtained

pursuant to §21.149 of this title (relating to Licenses), the permit must be converted to a permit for a sign other than a nonprofit sign, and the holder must pay the original permit and annual renewal fees set forth in subsection (g) of this section.

(6) A nonprofit organization that holds a valid permit for a nonconforming sign that would otherwise qualify for a permit under this subsection may convert its permit to one issued under this subsection.

(m) Conversion of rural road permits and registrations. The department will convert a registration issued under §21.431 of this title (relating to Registration of Existing Off-Premise Signs) or a permit issued under §21.441 of this title (relating to Permit for Erection of Off-Premise Sign) to a permit under this section if a highway previously regulated in accordance with Transportation Code, Chapter 394 becomes subject to control under the Act. A holder of a permit or registration converted under this subsection will not be required to pay an original permit fee under subsection (g) of this section; however, the permit must be renewed annually under subsection (d) of this section, on the date the renewal of the permit or registration issued under §21.431 or §21.441 would have been due. In the event a sign owner has prepaid registration fees, the outstanding prepayment will be credited to the sign owner's

1 annual renewal fee. The department will issue permit plates to
2 a holder of a permit or a registration converted under this
3 subsection at no charge. In the event replacement plates are
4 needed after the initial issuance, fees will be charged in
5 accordance with this section.

6 (n) New highway or change in highway designation. Owners
7 of signs that become subject to the Act because of the
8 construction of a new highway or the change in designation of an
9 existing highway must apply to the department for a permit and
10 must obtain an outdoor advertiser's license pursuant to §21.149
11 of this title (relating to Licenses) within 30 days after being
12 notified by the department that the sign has become subject to
13 the Act. If the owner of the sign cannot be identified from
14 information on the sign, notice may be given by prominently
15 posting notice on the sign for a period of 30 days.

16
17 §21.154. Lighting and Movement of Signs.

18 (a) Lighting. Signs may be illuminated except for signs
19 that contain, include, or are illuminated by:

20 (1) any flashing, intermittent, or moving light or
21 lights, including any type of screen using animated or scrolling
22 displays, [~~such as an LED (light emitting diode) screen or any~~
23 ~~other type of video display, even if the message is stationary,~~]

1 except those giving only public service information such as
2 time, date, temperature, weather, or similar information;

3 (2) lights that are:

4 (A) not effectively shielded so as to prevent beams or
5 rays of light from being directed at any portion of the traveled
6 ways of a regulated highway; and

7 (B) of such intensity or brilliance as to cause glare
8 or vision impairment of the driver of any motor vehicle, or
9 which otherwise interfere with any driver's operation of a motor
10 vehicle; and

11 (3) lights that interfere with the effectiveness of, or
12 obscure an official traffic sign, device, or signal.

13 (b) Moving parts. [~~Signs with intermittent messages are~~
14 ~~prohibited, including tri vision signs with rotating slat~~
15 ~~messages.~~] A cutout on a sign may be animated if it:

16 (1) is not lighted or enhanced by reflective material so
17 as to create the illusion of flashing or moving lights; or

18 (2) does not otherwise create a safety hazard to the
19 traveling public.

20 (c) Reflective materials. Reflective paint and reflective
21 disks may be used on a sign face unless they are determined by
22 the department to:

23 (1) create the illusion of flashing or moving lights; or

(2) cause an undue distraction to the traveling public.

(d) Non-flashing neon lights may be used on sign faces,
unless:

(1) the sign permit specifies an unilluminated sign
structure; or

(2) the lights are determined by the department to cause
an undue distraction to the traveling public.

§21.163. Electronic Signs.

(a) Electronic images. The department has determined that
the use of an electronic image on a digital display device is
not the use of a flashing, intermittent, or moving light for the
purposes of any rule, regulation, and standard promulgated by
the department or any agreement between the department and the
Secretary of Transportation of the United States.

(b) Prohibitions. An electronic sign shall not:

(1) be illuminated by flashing, intermittent, or moving
lights;

(2) contain or display animated, moving video, or
scrolling advertising;

(3) consist of a static image projected upon a stationary
object; or

(4) be a mobile sign located on a truck or trailer.

1 (c) Location of electronic signs.

2 (1) Electronic signs may only be located, relocated, or
3 upgraded along a regulated highway within the corporate limits
4 of a municipality or within the extraterritorial jurisdiction of
5 a municipality that pursuant to state law has extended its
6 municipal regulation to include that area and is allowed by the
7 municipality's sign or zoning ordinance.

8 (2) Notwithstanding §21.160 of this subchapter, an
9 electronic sign may not be relocated so that any part of the
10 relocated sign would be within 1,500 feet of another off-premise
11 electronic sign on the same side of a regulated highway.

12 (d) Upgrading an electronic sign.

13 (1) Lighting shall not be added to or used to illuminate
14 nonconforming signs.

15 (2) A legally conforming sign may be modified to an
16 electronic sign if a new permit for the electronic sign is
17 obtained from both the municipality and the department.

18 (3) Lighting shall not be added to or used to illuminate
19 a sign if prohibited by the municipality's sign or zoning
20 ordinance.

21 (e) Eligible electronic signs.

22 (1) Electronic signs may be located on either side of the
23 highway; however, each sign must only be visible from one

1 direction of travel.

2 (2) Each message on an electronic sign shall be displayed
3 for at least eight seconds and a change of message shall be
4 accomplished within two seconds.

5 (3) A change of message must occur simultaneously on the
6 entire sign face.

7 (f) Safety. An electronic sign must:

8 (1) contain a default mechanism that freezes the sign in
9 one position if a malfunction occurs; and

10 (2) automatically adjust the intensity of its display
11 according to natural ambient light conditions.

12 (g) Owner responsibilities.

13 (1) The owner of an electronic sign shall coordinate with
14 local authorities to display, when appropriate, emergency
15 information important to the traveling public, such as Amber
16 Alerts or alerts concerning terrorist attacks or natural
17 disasters. Emergency information messages shall remain in the
18 advertising rotation according to the protocols of the agency
19 that issues the information.

20 (2) The sign owner shall provide to the department
21 contact information for a person who is available to be
22 contacted at any time and who is able to turn off the electronic
23 sign promptly after a malfunction occurs.

1 (3) If the department finds that an electronic sign
2 causes glare or otherwise impairs the vision of the driver of a
3 motor vehicle or otherwise interferes with the operation of a
4 motor vehicle, the owner of the sign, within 12 hours of a
5 request by the department, shall reduce the intensity of the
6 sign to a level acceptable to the department.

7 (h) Granting permits. The department will grant a permit
8 for an electronic sign if the application for the permit:

9 (1) satisfies the requirements of this subchapter; and

10 (2) has attached to it:

11 (A) a certified copy of the permit issued by the
12 municipality that gives permission for the electronic sign; or

13 (B) if the municipality does not issue permits, a
14 certified copy of written permission for the electronic sign
15 from the municipality.

16 (i) Conflicts with subchapter. All regulations provided by
17 this subchapter apply to electronic signs, except if this
18 section conflicts with another provision of this subchapter,
19 this section controls.

SUBCHAPTER K. CONTROL OF SIGNS ALONG RURAL ROADS

§21.441. Permit for Erection of Off-Premise Sign.

(a) Applicability. A person shall not erect or cause to be erected an off-premise sign, other than an exempt sign, that is visible from the main-traveled way of a rural road without first having obtained a permit to do so from the commission acting by and through the district engineer of the department district office serving the county in which the proposed sign is to be located.

(b) Application and issuance.

(1) A sign owner who desires to erect or maintain a sign as required in this section must file an application, in duplicate, in a form prescribed by the department, which shall include, but not be limited to:

(A) the name and mailing address of the applicant;

(B) proposed location and description of the sign;

(C) how to find the road along which the sign is to be erected;

(D) name and address of the site owner;

(E) indication that the site owner has consented to the erection of the sign; and

(F) such additional information as the department deems necessary.

(2) The application must be signed under oath by the sign owner and filed with the district engineer in whose district the sign is to be erected, and shall be accompanied by:

(A) the prescribed fee or fees; and

(B) if the outdoor advertising is located within the jurisdiction of a municipality with a population of more than 1.9 million, a certified copy of the permit for the sign issued by the municipality; and

(C) if the proposed sign will have a height of six feet or more above the ground, as measured above the average level of the ground adjacent to the proposed structure, a certificate signed by the sign owner to the effect that the proposed sign will withstand wind load pressures in pounds per square foot as set out in the following table.

Figure: 43 TAC §21.441 (b)(2)(C) [~~(B)~~]

| Wind Load Pressure in Pounds per Square Foot | |
|---|----------------------------------|
| Height, in feet above ground, as measured above the average level of the ground adjacent to the structure | Pressure, pounds per square foot |
| 0 – 5 | 0 |
| 6 – 30 | 20 |
| 31 – 50 | 25 |
| 51 – 99 | 35 |
| 100 – 199 | 45 |
| 200 – 299 | 50 |
| 300 – 399 | 55 |
| 400 – 500 | 60 |
| 501 – 800 | 70 |
| Over 800 | 77 |

(3) Before approving a permit application, the district engineer shall determine that the proposed sign will:

(A) be located within 800 feet of a recognized commercial or industrial activity located on the same side of the roadway;

(B) be located along a roadway subject to control under these sections;

(C) meet all applicable requirements of the sections under this undesignated head; and

(D) not be subject to control under the Texas Litter Abatement Act.

(4) If approved, a copy of the application will be endorsed by the district engineer and returned to the applicant along with a permit number. Within 30 days after it is received, the permit number shall be displayed on the sign structure in the following manner:

(A) legibly displayed on the edge of the sign structure nearest the roadway; and

(B) in numerals with a minimum height of two inches and minimum width of one inch.

(c) Permit renewals.

(1) Subject to the terms and location stated in the permit application, a permit issued under this section shall be

1 valid for a period of one year, provided the sign is erected and
2 maintained in accordance with the applicable sections under this
3 undesignated head. The permitted sign must be erected within
4 one year from the date the original permit is issued in order
5 for a sign permit to be eligible for renewal.

6 (2) To renew a permit under this subsection, a permit
7 holder must file with the district engineer a written request in
8 a form prescribed by the department, together with the
9 prescribed renewal fee; and further provided that the sign
10 continues to meet all applicable requirements.

11 (d) Permit transfer.

12 (1) A permit may only be assigned with the written
13 approval of the district engineer.

14 (2) The holder of a permit or permits who desires to
15 transfer one or more permits must file with the district
16 engineer a request in a form prescribed by the department,
17 together with the prescribed transfer fee. The transferor and
18 transferee will each be issued a copy of the approved permit
19 transfer form.

20 (e) Permit fees.

21 (1) For a permit issued pursuant to this section:

22 (A) the original fee is \$96 for each sign;

23 (B) the annual renewal fee is \$40; and

1 (C) the fee is \$25 for each permit transferred.

2 (2) A fee prescribed in this subsection is payable to the
3 State of Texas, and is nonrefundable.

4

5 §21.551. Prohibited Signs.

6 (a) No sign may be erected within the right-of-way of any
7 rural road nor within what would be the right-of-way if the
8 right-of-way boundary lines were projected across an area of
9 railroad right-of-way, utility right-of-way, or road right-of-
10 way not owned by the state or any political subdivision thereof.

11 (b) No sign shall be erected which contains or is
12 illuminated by any flashing, intermittent, or moving light
13 except a sign giving solely public service information such as
14 time, date, temperature, or weather.

15 (c) No sign shall be so illuminated that it interferes with
16 the effectiveness of, or obscures, an official traffic sign,
17 device, or signal.

18 (d) No sign shall be erected or contain a display which
19 imitates or resembles any official traffic sign, signal, or
20 device.

21 (e) No sign may be erected or maintained upon a tree or
22 painted or drawn upon rocks or other natural features.

23 (f) No sign may be erected that uses any type of screen

1 using animated or scrolling displays even if the message is
2 stationary.

3 (g) No digital sign including a sign, display or device
4 that changes the message or copy on the sign by electronic
5 processes may be erected.